

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

MARGARET MARSHALL

Chief Justice

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1. Court Submitting Rules for Approval:

Probate and Family Court Department

2. Date Rules Submitted for Approval:

May 18, 2009

3. Date Approved and Promulgated by the Supreme Judicial Court:

June 24, 2009

4. Rules or Rules, or Amendments Thereto, Approved and Promulgated:

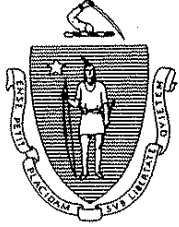
Amendments to Mass. R. Dom. Rel. P. 17 and 25;

Amendments to General Rules of the Probate Court Rules 4, 5,

6, 29B and new Rule 29D, all as attached.

Effective date - July 1, 2009

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)



THE COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT  
ADMINISTRATIVE OFFICE  
TWO CENTER PLAZA, SUITE 210  
BOSTON, MA 02108

PAULA M. CAREY  
CHIEF JUSTICE

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May 18, 2009

Honorable Roderick L. Ireland, Associate Justice  
Supreme Judicial Court  
John Adams Courthouse  
Pemberton Square  
Boston, MA 02108

Dear Justice Ireland,

I write to submit proposed changes to the Rules of Civil Procedure, Rules of Appellate Procedure, Supreme Judicial Court Rules, Trial Court Rules, Rules of District and Municipal Courts, Rules of the Superior Court, and General Rules of the Probate Court for approval by the Supreme Judicial Court. **These proposed rule changes are necessary because of the implementation of Article V of the Massachusetts Uniform Probate Code on July 1, 2009.**

On January 15, 2009, Governor Patrick signed into law An Act Relative to the Uniform Probate Code. This act inserts the Massachusetts Uniform Probate Code, Articles I-VII at Chapter 190B. Sections 1-201, 1-401, 1-404 of Article I and Article V are effective July 1, 2009, while the remainder of the Code is effective on July 1, 2011.

These proposed changes were recommended by the Article V Working Group of the Uniform Probate Code Implementation Committee and approved by me. The proposed rules were published in Lawyers Weekly for public comment and were also distributed to the Boston Bar Association, Massachusetts Bar Association, Women's Bar Association, Asian-America Lawyers Association of Massachusetts, Massachusetts Association of Hispanic Attorneys, Massachusetts Black Lawyers Association, Massachusetts Lesbian and Gay Bar Association, Southern Asian Bar Association and the Department of Revenue. The justices of the Probate and Family Court voted on the rules, and responded with a majority voting in favor of the adoption of the revised rules. The proposed rules have also been sent to Chief Justice for Administration and Management Robert Mulligan, as well as the Chief Justice of each Trial Court Department, for their review. Changes were made as a result of their review. In addition, the proposed rules have been sent to the chairs of the Standing Committee on the Rules of Civil and Appellate Procedure and the Standing Advisory Committee on the Rules of Professional Conduct.

If approved, we would like the rules to become effective on July 1, 2009.

Two of the most significant changes to probate practices as a result of the implementation of the Uniform Probate Code include that a guardian will now have responsibility over the person only and a conservator will have responsibility for the funds of the protected or disabled person. Additionally, the oversight responsibilities of the Probate and Family Court have increased in guardianships and conservators matters due to reporting and monitoring requirements and will decrease with regard to routine estate filings.

Enclosed are a red-lined version of the rules, as well as a clean copy of the rules. In addition, I have included a summary of the sections of the Uniform Probate Code that are effective as of July 1, 2009. If you or the Court's staff have any questions or comments, I would be happy to discuss them with you. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Paula M. Carey". The signature is stylized with a large, sweeping loop that extends upwards and to the right.

Paula M. Carey  
Chief Justice

Enclosures

cc: Honorable Margaret H. Marshall, Chief Justice  
Hon. Robert A. Mulligan, Chief Justice for Administration and Management  
Christine P. Burak, Esq.

## **DOMESTIC RELATIONS PROCEDURE RULES**

Rules as amended: old language struck through, new language in italics

### **Rule 17**

**(a) Real Party in Interest.** Except for any action brought under General Laws, chapter 152, section 15, every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, *conservator*, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute so provides, an action for the use or benefit of another shall be brought in the name of the Commonwealth. An insurer who has paid all or part of a loss may sue in the name of the assured to whose rights it is subrogated. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

**(b) Infant or Incompetent Persons or Incapacitated Persons.** Whenever an infant or incompetent person, *or an incapacitated person as defined in G.L. c.190B* has a representative, such as a ~~general~~ guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person, *or an incapacitated person as defined in G.L. c.190B*. If an infant or incompetent person, *or an incapacitated person as defined in G.L. c.190B* does not have a duly appointed representative, he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person, *or an incapacitated person as defined in G.L. c.190B* not otherwise represented in an action or may make such other order as it deems proper for the protection of the infant or incompetent person, *or an incapacitated person as defined in G.L. c.190B*.

## **RULE 25 SUBSTITUTION OF PARTIES**

**(a), (c), (d)** [ Deleted.]

**(b) Incompetency or Incapacity.** If a party becomes incompetent *or incapacitated as defined in G.L. c.190B*, the court upon motion served, may allow the action to be continued by or against his representative.

## GENERAL RULES OF THE PROBATE COURT

Rules as amended: old language struck through, new language in italics

### Rule 4. Copies to Adverse Parties

When any pleading or motion is filed after the petition, ~~libel~~ or other probate proceedings, or answers to interrogatories are filed, a copy thereof shall be delivered or mailed to the adverse parties not later than the day of filing, in the manner provided for notices by Rule 3.

In case of failure to comply with this rule, the Court may entertain a motion to strike or deny such pleading, motion, or answers upon terms against the party at fault.

## **Rule 5. Guardians Ad Litem**

In addition to making appointments of guardians ad litem in cases required by statute, whenever it shall appear that a minor, *mentally retarded person, a person under disability, an incapacitated person, a person to be protected or a person not ascertained or not in being* or ~~other legally incompetent person or persons unborn or unascertained,~~ *are-is* interested in any matter pending, a guardian ad litem for *said person such minor, or other legally incompetent person or persons unborn or unascertained,* may be appointed by the Court at its discretion if notice has been given on the pending matter. No Judge of Probate *and Family Court* shall be appointed a guardian ad litem.

## Rule 6. Return Days

All citations shall be made returnable not later than three months after the date of such citation except as otherwise provided by statute. Every day when a court session is scheduled in the city or town where the Registry is located shall be a return day for probate citations.

If it shall appear from the petition that there is anyone interested who is outside the Commonwealth in any part of *the United States, its Commonwealths or territories and North America* ~~the United States or territory belonging thereto East of the Pacific Ocean, except Alaska, or in Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, Quebec or Ontario;~~ service of any citation shall be given by mailing by registered or certified mail fourteen days at least before the return day; if in ~~any other part of North America, including the West India Islands, the Bahama Islands and Bermuda;~~ or in Europe, one month; in other parts or in parts unknown, two months. If all persons interested appear to be within the Commonwealth, ~~service of any citation shall be given by delivering or mailing by registered or certified mail fourteen days at least before the return day,~~ *service of any citation shall be given by delivering or mailing by certified, registered or ordinary first class mail at least fourteen days before the return day or by publishing a copy of the citation once in a newspaper designated by the Register of Probate having general circulation in the county where the proceeding is pending at least seven days before the return date.*

There shall be only one return day outstanding, and no return day shall be changed or extended before the return day unless it is certified in writing by the party or his attorney that no service has been made on the original citation. *Notwithstanding the foregoing, if counsel is appointed to represent an alleged incapacitated person, incapacitated person, person to be protected, protected person, minor or ward at any point prior to the entry of a Decree on the petition, the Court may provide a separate date by which said counsel may file an Appearance and Objection.*



### **Rule 29B. Temporary Conservatorships and Guardianships**

Written notice of a hearing on a petition for a temporary conservatorship or guardianship shall be given at least ~~seventy-two (72) hours (Saturdays, Sundays and holidays excluded)~~ *seven (7) days* in advance of said hearing, as follows:

(1) Temporary Guardianship of a Minor

- a. To the minor, if he is ~~above the age of fourteen or more years of age~~; and
- b. ~~To the natural or adoptive parents of said minor; and~~
- c. ~~If custody of said minor has been awarded by a Court of competent jurisdiction, to the person or persons to whom custody has been awarded; and~~
- d. ~~To the person or persons with whom said minor child is residing.~~ *To all persons named in said petition.*

(2) Temporary Guardianship of an ~~Incapacitated Person Mentally Ill Person~~ and Temporary Conservatorship.

- a. ~~To the proposed ward; and~~
- b. ~~To the spouse and to the children who are of legal age of the proposed ward and, if the proposed ward has no living spouse nor children of legal age, to the next of kin of legal age.~~
- a. *To the person alleged to be incapacitated or the person to be protected and his or her spouse and children, or, if none, parents, brothers and sisters, or, if none, heirs apparent or presumptive;*
- b. *To any person who is serving as guardian, conservator, or who has the care or custody of the person or with whom the person has resided during the 60 days (exclusive of any period of hospitalization or institutionalization) preceding the filing of the petition;*
- c. *In case no other person is notified under paragraph (a), to at least one of the nearest adult relatives, if any can be found;*
- d. *To all other persons named in the petition;*
- e. *If the person is alleged to be mentally retarded, to the Department of Developmental Services;*
- f. *To the United States Veteran's Administration or its successor, if the person is entitled to any benefit, estate or income paid or payable by or through said Administration or its successor; and*
- g. *To any other person as directed by the Court.*

*Notice shall be given to the Respondent in hand and to all other interested persons by delivery or mail.*

~~A sworn affidavit of notice shall be filed with the Court at or before the time of hearing of the petition. In the event that any person to whom notice is required is of parts unknown, such notice shall be delivered or mailed to that person's last known address and the fact of such delivery or mailing shall be recited in the affidavit of notice.~~

~~If the Court determines that a situation exists which requires the immediate appointment of a temporary conservator or temporary guardian, it may waive the notice requirements hereinbefore set forth and grant the petition, provided, however, that notice of the allowance of said petition is given, to the person or persons hereinbefore described, stating further that any such person may move to vacate the order of the Court or request that the Court take any other appropriate action on the matter and on said motion to vacate, the Court shall hear said petition as a de novo matter, as expeditiously as possible. A sworn affidavit stating that such notice has been given shall be filed with the Court within three (3) days (excluding Saturdays, Sundays and holidays) following the date of allowance of the petition. Upon failure to file such affidavit the Court may on its own motion vacate said decree. In the event that any person to whom notice is required is of parts unknown, such notice shall be delivered or mailed to that person's last known address, and the fact of such delivery or mailing shall be recited in the affidavit of notice.~~

~~The appointment of a temporary conservator or temporary guardian shall be effective for a period of ninety (90) days from the date thereof and each certificate of appointment issued shall have, in a prominent place, the following notation:~~

~~"THE AUTHORITY OF THE - CONSERVATOR - GUARDIAN - NAMED HEREIN IS LIMITED TO A PERIOD WHICH EXPIRES ON \_\_\_\_\_."~~

~~The Court may, for good cause shown, extend for additional ninety (90) day periods the appointment of a temporary conservator or temporary guardian provided the same procedure as outlined above is followed, and subsequent certificates of appointment shall bear the notation above specified with respect to the expiration of the period within which the temporary conservator or temporary guardian may act. No such extension may be granted unless an affidavit of notice has properly been filed.~~

~~No temporary appointment of a guardian or conservator will be allowed unless a permanent petition has been filed and is being prosecuted.~~

~~No extension of a beyond the original ninety (90) day temporary appointment of a conservator will be allowed unless an inventory and bond of the temporary fiduciary has been filed.~~

*Insertion of a new Rule:*

**Rule 29D. Notice Regarding Appointment of Counsel**

- A) *In all guardianship of an incapacitated person and in all conservatorship matters, all notices and all citations shall include the following language in the following format:*

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**IMPORTANT NOTICE**

*The outcome of this proceeding may limit or completely take away the above-named person's right to make decisions about personal affairs or financial affairs or both. The above-named person has the right to ask for a lawyer. Anyone may make this request on behalf of the above-named person. If the above-named person cannot afford a lawyer, one may be appointed at State expense.*

- B) *In all guardianship of minor matters, all notices and all citations shall include the following language in the following format:*

**IMPORTANT NOTICE**

*The minor or another person on his or her behalf may ask for a lawyer for the minor. If the minor cannot afford a lawyer, one may be appointed at State expense.*